HOUSE BILL No. 1984

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-2.5-5.5; IC 6-3-2-8.5; IC 6-3.1-21.

Synopsis: Enterprise zones. Provides a credit against state sales and use tax liability for certain purchases made: (1) by or on behalf of a taxpayer that owns real property in an enterprise zone; (2) from a person whose place of business is within an enterprise zone or a city in which an enterprise zone is located; and (3) for the purpose of the redevelopment or rehabilitation of a business or residence in an enterprise zone. Provides that an individual is entitled to an adjusted gross income tax deduction equal to the amount of qualified increased enterprise zone adjusted gross income received by the individual during the taxable year (including the individual's distributive share of a pass through entity's qualified increased enterprise zone adjusted

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Effective: July 1, 1999; January 1, 2000.

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January 27, 1999, read first time and referred to Committee on Ways and Means.

gross income). Provides a credit against state tax liability for jobs created at locations within an enterprise zone.

Introduced

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

HOUSE BILL No. 1984

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 6-2.5-5.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]:

Chapter 5.5. Credit for Certain Qualified Purchases

Sec. 1. As used in this chapter, "building materials" means any items that are or may be permanently affixed to real property.

Sec. 2. As used in this chapter, "enterprise zone" means a zone established under IC 4-4-6.1.

Sec. 3. As used in this chapter, "pass through entity" means a:

(1) corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);

(2) partnership;

(3) limited liability company; or

(4) limited liability partnership.

Sec. 4. As used in this chapter, "qualified purchase" means the

purchase of building materials that is made:

(1) by or on behalf of a taxpayer that owns real property in an enterprise zone;

(2) from a person whose place of business is within:

(A) an enterprise zone; or

(B) a city in which an enterprise zone is located; and

(3) for the purpose of the redevelopment or rehabilitation of a business or residence in an enterprise zone.

Sec. 5. As used in this chapter, "state sales and use tax liability" means a taxpayer's total tax liability incurred under this article before the application of any credit to which the taxpayer is entitled under this chapter.

Sec. 6. As used in this chapter, "taxpayer" means a person, corporation, or pass through entity that makes a qualified purchase.

Sec. 7. (a) A taxpayer that makes a qualified purchase during a calendar year is entitled to a credit against the taxpayer's state sales and use tax liability for that calendar year.

(b) The amount of the credit to which a taxpayer is entitled equals the sum of the following:

(1) One hundred percent (100%) of the state sales and use tax paid by the taxpayer during the calendar year for a qualified purchase from a person whose place of business is within an enterprise zone.

(2) Fifty percent (50%) of the state sales and use tax paid by the taxpayer during the calendar year for a qualified purchase from a person whose place of business is not within an enterprise zone but is within a city in which an enterprise zone is located.

(c) The credit under this chapter must be claimed on a quarterly basis in the form of a claim for a refund prescribed by the department.

Sec. 8. The department shall adopt rules under IC 4-22-2 to carry out this chapter.

SECTION 2. IC 6-3-2-8.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2000]: **Sec. 8.5. (a) For purposes of this section, the following terms have the following meanings:**

(1) "Adjusted gross income derived from sources within an enterprise zone" means:

(A) adjusted gross income from real property or tangible personal property located in an enterprise zone;

(B) income from doing business in an enterprise zone;
(C) income from a trade or profession conducted in an enterprise zone;
(D) compensation for labor or services rendered within an enterprise zone; and
(E) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property having a situs in an enterprise zone.

(2) "Base period adjusted gross income" means the adjusted gross income of a person that would have been adjusted gross income derived from sources within an enterprise zone if an enterprise zone had been in existence during the year that ends on the last day of the month that immediately precedes the month in which the enterprise zone is established. If the person did not engage in an active trade or business during that year in an area that is later designated as an enterprise zone, the person's base period adjusted gross income equals zero (0). If the person engaged in an active trade or business during only part of that year in an area that is later designated as an enterprise zone, the department shall determine the amount of base period adjusted gross income.

(3) "Enterprise zone" means an enterprise zone created under IC 4-4-6.1.

(4) "Monthly base period adjusted gross income" means base period gross income divided by twelve (12).

(5) "Pass through entity" means a:
(A) corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);
(B) partnership;
(C) trust;
(D) limited liability company; or
(E) limited liability partnership.

(6) "Qualified increased enterprise zone adjusted gross income" means the following:
(A) For a person's taxable year other than the person's taxable year in which the enterprise zone is established, the amount by which adjusted gross income derived by the person from sources within the enterprise zone during the taxable year exceeds the person's base period adjusted gross income.

(B) For the person's taxable year in which the enterprise zone is established, the amount by which adjusted gross income derived by the person from sources within the enterprise zone during all of the full calendar months in the person's taxable year that succeed the date on which the enterprise zone was established exceeds the person's monthly base period adjusted gross income multiplied by that same number of full calendar months.

(b) Each taxable year, an individual is entitled to an adjusted gross income tax deduction equal to the amount of qualified increased enterprise zone adjusted gross income received by the individual during the taxable year.

(c) In the case of a pass through entity that receives qualified increased enterprise zone adjusted gross income, an individual who is a shareholder, partner, beneficiary, or member of the pass through entity is entitled to claim the deduction under this section. The amount the individual may claim as a deduction is equal to:

(1) the amount of the qualified increased enterprise zone adjusted gross income received by the pass through entity during the taxable year; multiplied by

(2) the percentage of the pass through entity's distributive income to which the shareholder, partner, beneficiary, or member is entitled.

(d) The allocation, apportionment, and derivation provisions used for gross income under IC 6-2.1-3-32 apply for purposes of determining the allocation, apportionment, and derivation of adjusted gross income under this section.

SECTION 3. IC 6-3.1-21 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2000]:

Chapter 21. Enterprise Zone Job Creation Credit

Sec. 1. As used in this chapter, "employer" has the meaning set forth in IC 6-3-1-5.

Sec. 2. As used in this chapter, "enterprise zone" means an enterprise zone created under IC 4-4-6.1.

Sec. 3. As used in this chapter, "full-time employee" means an individual who is employed for consideration for at least thirty-five (35) hours each week or who renders any other standard of service generally accepted by custom or specified by contract as full-time employment.

Sec. 4. (a) As used in this chapter, "new employee" means a full-time employee first employed by a taxpayer at the employer's

enterprise zone location and who is employed after December 31 of the employer's previous taxable year.

(b) The term "new employee" does not include:

(1) an employee of the taxpayer who performs a job that was previously performed by another employee, if that job existed for at least six (6) months before hiring the new employee;

(2) an employee of the taxpayer who was previously employed in Indiana by a related member of the taxpayer and whose employment was shifted to the taxpayer after the taxpayer entered into the tax credit agreement; or

(3) a child, grandchild, parent, or spouse, other than a spouse who is legally separated from the individual, of any individual who is an employee of the taxpayer and who has a direct or an indirect ownership interest of at least five percent (5%) in the profits, capital, or value of the taxpayer. For purposes of this chapter, an ownership interest shall be determined in accordance with Section 1563 of the Internal Revenue Code and regulations prescribed under that Section.

(c) Notwithstanding subsection (b)(1), if a new employee performs a job that was previously performed by an employee who was:

(1) treated under the agreement as a new employee; and

(2) promoted by the taxpayer to another job;

the employee may be considered a new employee under the agreement.

Sec. 5. As used in this chapter, "pass through entity" means:

(1) a corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);

(2) a partnership;

(3) a limited liability company; or

(4) a limited liability partnership.

Sec. 6. As used in this chapter, "related member" means a person that, with respect to the taxpayer during all or any portion of the taxable year, is any one (1) of the following:

(1) An individual stockholder, or a member of the stockholder's family enumerated in Section 318 of the Internal Revenue Code, if the stockholder and the member of the stockholder's family own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty percent (50%) of the value of the taxpayer's outstanding stock.

(2) A stockholder, or a stockholder's partnership, estate, trust, or corporation, if the stockholder and the stockholder's

partnership, estate, trust, or corporation owns directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty percent (50%) of the value of the taxpayer's outstanding stock.

(3) A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of Section 318 of the Internal Revenue Code, if the taxpayer owns directly, indirectly, beneficially, or constructively at least fifty percent (50%) of the value of the corporation's outstanding stock.

(4) A component member (as defined in Section 1563(b) of the Internal Revenue Code).

(5) A person to or from whom there is attribution of stock ownership in accordance with Section 1563(e) of the Internal Revenue Code. However, for purposes of determining whether a person is a related member under this subdivision, twenty percent (20%) shall be substituted for five percent (5%) wherever five percent (5%) appears in Section 1563(e) of the Internal Revenue Code.

Sec. 7. As used in this chapter, "state tax liability" means a taxpayer's total tax liability that is incurred under:

(1) IC 6-2.1 (gross income tax);

(2) IC 6-3-1 through IC 6-3-7 (adjusted gross income tax);

(3) IC 6-3-8 (supplemental corporate net income tax);

(4) IC 6-5-10 (bank tax);

(5) IC 6-5-11 (savings and loan association tax);

(6) IC 6-5.5 (financial institutions tax); and

(7) IC 27-1-18-2 (insurance premiums tax);

as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

Sec. 8. As used in this chapter, "taxpayer" means a person, corporation, or pass through entity whose primary operations are conducted in an enterprise zone.

Sec. 9. A taxpayer is entitled to a credit against the taxpayer's state tax liability for a taxable year equal to the amount determined under the following STEPS:

STEP ONE: Determine the lesser of:

(A) the number of new employees employed at the taxpayer's enterprise zone location in the taxable year; or

(B) the result of the total number of full-time employees

employed by the taxpayer at the taxpayer's enterprise zone location in the taxable year minus the greater of:

(i) the total number of full-time employees employed at the taxpayer's enterprise zone location in the previous taxable year; or

(ii) the total number of full-time employees employed at the taxpayer's enterprise zone location in the year before the zone was designated as an enterprise zone.

STEP TWO: Multiply the amount determined under STEP ONE by one thousand five hundred dollars ($1,500).

Sec. 10. (a) If the amount determined under section 9 of this chapter for a taxpayer in a taxable year exceeds the taxpayer's state tax liability for that taxable year, the taxpayer may carry the excess over to the following taxable years. The amount of the credit carryover from a taxable year shall be reduced to the extent that the carryover is used by the taxpayer to obtain a credit under this chapter for any subsequent taxable year. A taxpayer is not entitled to a carryback.

(b) A taxpayer is entitled to a refund of any unused credit.

Sec. 11. If a pass through entity does not have state income tax liability against which the tax credit may be applied, a shareholder or partner of the pass through entity is entitled to a tax credit equal to:

(1) the tax credit determined for the pass through entity for the taxable year; multiplied by

(2) the percentage of the pass through entity's distributive income to which the shareholder or partner is entitled.

Sec. 12. To receive the credit provided by this chapter, a taxpayer must claim the credit on the taxpayer's state tax return in the manner prescribed by the department. The taxpayer must submit to the department proof of payment of the payroll expenditures and all information that the department determines is necessary for the calculation of the credit provided by this chapter.

SECTION 4. [EFFECTIVE JANUARY 1, 2000] **IC 6-3-2-8.5 and IC 6-3.1-21, both as added by this act, apply only to taxable years beginning after December 31, 1999.**